



**Before The
State of Wisconsin
DIVISION OF HEARINGS AND APPEALS**

In the Matter of Claims Against the Dealer Bond
of Twons Auto Sales, LLC

Case No: DOT-22-0003

FINAL DETERMINATION

On January 3, 2022, Claimant Antoinette Robinson (Claimant) filed a bond claim with the Wisconsin Department of Transportation (Department) against the motor vehicle dealer bond of Twons Auto Sales, LLC (Dealer). Pursuant to Wis. Admin. Code § Trans 140.26, a Public Notice to File Dealer Bond Claims had previously been published in the Daily Reporter, a newspaper published in Milwaukee, Wisconsin, on October 15, 2021, with regard to another bond claim against the same Dealer, Case No. DOT-21-0022. The notice informed other persons who may have claims against the Dealer to file them with the Department by December 14, 2021. The Claimant in the present matter submitted an online complaint to the Department on December 3, 2021 and submitted a signed bond claim form to the Department on January 4, 2022. This matter may be paid but only to the extent that any funds remain after the payment of all timely and allowed claims pursuant to Wis. Admin. Code § Trans 140.27. On February 4, 2022 a Preliminary Determination was issued under Wis. Admin. Code § Trans 140.26(4)(a). No objections to the Preliminary Determination were received. Pursuant to Wis. Admin. Code § Trans 140.26(5)(d), the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with Wis. Stat. § 227.47 and 227.53(1)(c) the PARTIES to this proceeding are certified as follows:

Twons Auto Sales, LLC
7928 W. Clinton Avenue
Milwaukee, WI 53223

Western Surety Company
101 Reid Street, #300
Sioux Falls, SD 57103

Tanisha M. Rhodes
3222 N. 1st Street
Milwaukee, WI 53212

Antoinette Robinson
7734 N. Pointe Street

Milwaukee, WI 53224

FINDINGS OF FACT

1. Twons Auto Sales, LLC (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 7928 W. Clinton Avenue, Milwaukee, Wisconsin. The Dealer was placed out of business on December 14, 2021.

2. The Dealer has two continuous surety bonds in force in the amount of \$50,000 each satisfying the requirements of Wis. Stat. § 218.0114(5). The first continuous bond began on January 21, 2020 (Bond # 64944195) issued by Western Surety Company. The second continuous bond lists a beginning date of February 17, 2021 (Bond #65398472) and was also issued by Western Surety Company.

3. On September 6, 2021, the Dealer sold to the Claimant a 2011 Volkswagen, VIN WVGAV7AX6BW550146 (vehicle). The purchase price for the vehicle was listed as \$3,500 with the Claimant having paid \$329.95 in registration and title fees toward the vehicle.

4. On December 3, 2021, the Claimant submitted an online complaint to the Department stating that she had never received plates for the vehicle and that the vehicle's engine had failed resulting in the vehicle having to be junked.

5. The Dealer did not submit any registration or application to title the vehicle in the Claimant's name.

6. The Department was unable to issue clear title for the vehicle to the Claimant due to the Claimant no longer being in possession of the vehicle.

7. On January 3, 2022, the Claimant submitted a bond claim with the Department alleging damages in the amount of \$329.95 for reimbursement of the title and registration fees the Claimant paid to the Dealer.

8. The Claimant's claim arose on September 6, 2021, which is the date when the vehicle was purchased and when the Dealer failed to properly submit the application for title to the vehicle that is the subject of the claim against the surety bond of the Dealer. The bond claim was filed within three years of the ending date of the one-year period the bond issued by Western Surety Company was in effect and is, therefore, a timely claim.

DISCUSSION

The procedure for determining claims against dealer bonds is set forth at Wis. Admin. Code Chapter Trans 140, Subchapter II. Wis. Admin Code § Trans 140.21(1) provides in relevant part:

A claim is an allowable claim if it satisfies each of the following requirements and is not excluded by sub. (2) or (3):

- (a) The claim shall be for monetary damages in the amount of an actual loss suffered by the claimant.
- (b) The claim arose during the period covered by the security.
- (c) The claimant's loss shall be caused by an act of the licensee, or the [licensee's] agents or employees, which is grounds for suspension or revocation of any of the following:
 - 1. A salesperson license or a motor vehicle dealer license, in the case of a secured salesperson or motor vehicle dealer, pursuant to s. 218.0116(1)(a) to (gm), (im)2., (j), (jm), (k), (m) or (n) to (p), Stats.
 - ...
- (d) The claim must be made within 3 years of the last day of the period covered by the security. The department shall not approve or accept any surety bond or letter of credit which provides for a lesser period of protection.

Under Wis. Stat. § 342.16(1)(a), Transfer to or From Dealer:

...Within 7 business days following the sale or transfer, the dealer shall process the application for certificate of title, and within the next business day after processing the application, the dealer shall mail or deliver the original application for certificate and all associated materials required by the department to the department.

To allow claim against the Dealer's surety bond a finding must be made that the Dealer violated one of the sections of Wis. Stat. § 218.0116(1), identified in Wis. Admin. Code § Trans 140.21(1)(c)1, and that the violation caused the loss claimed. The Dealer in this matter failed to properly submit the title application to the Department as necessary to process the title and registration for the vehicle sold to the Claimant contrary to Wis. Stat. § 342.16(1)(a). A violation of this section, in turn, constitutes a violation of Wis. Stat. § 218.0116(1)(gm). Wis. Stat. § 218.0116(1)(gm) is a section identified in Wis. Admin. Code § Trans 140.21(1)(c)1.

As a result of the Dealer's action, or inaction, the Claimant never received title to the vehicle and the Department was unable to issue a clear title to the vehicle to the Claimant because the Claimant was no longer in possession of the vehicle after having junked the vehicle due to its engine failure. The Claimant's Bond Claim form submitted in this matter listed the total amount of the claim as \$329.95, which is the amount of title and registration fees that was paid to the Dealer for the vehicle. Two prior bond claims were previously timely filed against the Dealer's bond in the amount of \$1,929, Case No. DOT-21-0022, and in the amount of \$6,655, Case No. DOT-21-0027. As the total amount of all claims filed against the Dealer's bond(s) is less than the value of the \$50,000 bond, the Claimant's bond claim in the present matter is allowable. Wis. Admin. Code §§ Trans 140.23(1)(b) and 140.27.

CONCLUSIONS OF LAW

1. The Claimant's claim arose September 6, 2021, which is when the Dealer failed to submit the title application and registration fees associated with the vehicle sale. The continuous surety bonds issued to the Dealer by Western Surety Company cover the period commencing on February 17, 2021. The claim arose during the period covered by the surety bond.

2. The Claimant filed a claim against the motor vehicle dealer bond of the Dealer on January 3, 2022, which is within three years of the last day of the period covered by the surety bond. Pursuant to Wis. Admin. Code §§ Trans 140.21(1)(d) and 140.27, the present claim may be paid from any remaining bonds funds after the payment of all prior timely and allowable claims.

3. The Claimant's loss was caused by an act of the Dealer that would be grounds for suspension or revocation of its motor vehicle dealer license pursuant to Wis. Stat. §§ 218.0116(1)(gm) and 342.16(1)(a). The Claimant has supplied documentation to support a claim of actual loss in the amount of \$329.95.

4. The Division of Hearings and Appeals has authority to issue the following order.

ORDER

The claim filed by the Department against the motor vehicle dealer bond of Twons Auto Sales, LLC is APPROVED in the amount of \$329.95. Western Surety Company shall pay the Claimant this amount for his loss attributable to the actions of Twons Auto Sales, LLC.

Dated at Madison, Wisconsin on March 9, 2022.

STATE OF WISCONSIN
DIVISION OF HEARINGS AND APPEALS
4822 Madison Yards Way
Madison, Wisconsin 53705
Telephone: (608) 266-7709
FAX: (608) 264-9885

By: _____


Kristin P. Fredrick
Administrative Law Judge

NOTICE

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Administrative Law Judge. This notice is provided to ensure compliance with Wis. Stat. § 227.48 and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Department of Transportation a written petition for rehearing pursuant to Wis. Stat. § 227.49. A copy of any such petition for rehearing should also be provided to the Administrative Law Judge who issued the order. Rehearing may only be granted for those reasons set out in Wis. Stat. § 227.49(3). A petition under this section is not a prerequisite for judicial review under Wis. Stat. §§ 227.52 and 227.53.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of Wis. Stat. §§ 227.52 and 227.53. Said petition must be served and filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Pursuant to Wis. Admin. Code § TRANS 140.26(7), the attached final decision of the Administrative Law Judge is a final decision of the Department of Transportation, so any petition for judicial review shall name the Department of Transportation as the respondent. The Department of Transportation shall be served with a copy of the petition either personally or by certified mail. The address for service is:

Office of General Counsel
Wisconsin Department of Transportation
4822 Madison Yards Way, 9th Floor South
Madison, Wisconsin 53705

Persons desiring to file for judicial review are advised to closely examine all provisions of Wis. Stat. § 227.52 and 227.53 to ensure strict compliance with all its requirements.